IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc. No. 48995-M of 2004

Date of Decision : 07.05.2007

Bharat Insecticides Ltd. and another.

…. Petitioners

Versus

State of Haryana.

… Respondent

CORAM : HON'BLE MR. JUSTICE S.D. ANAND.

Present : Mr. Arun Nehra, Advocate,
for the petitioners.

Mr. S.S. Mor, Senior Deputy Advocate General, Haryana,
for the respondent.

S.D. Anand, J.

1. The following relevant facts may be noticed in the first instance:-

A particular insecticide was manufactured on 05.12.2001 and its expiry date was given to be 04.12.2003. Sh. Azad Singh, Insecticides Inspector, SDA Bahadurgarh drew a sample from out of that insecticide on 19.12.2001. It was sent for analysis on 24.12.2001. Analysis report (Annexure P-1) was received on 08.01.2002. On the basis thereof, a show cause notice dated 14.01.2002 (Annexure P-2) was issued by the Deputy Director, Agriculture, Jhajjar. Reply thereof (Annexure P-3) dated 24.01.2002 was furnished by the petitioners whereby a specific prayer for re-analysis by the Central Laboratory was made. In response thereto, the

Deputy Director Agriculture, Jhajjar replied on 04.02.2002 that the relevant request ought to be made by the petitioners to the concerned competent Court of law. After the grant of sanction to prosecute (which was granted on 13.05.2002), complaint was filed in the Court on 12.06.2002. The petitioners were served for appearance in the month of October 2002. Petitioner No.2 filed an application on 13.11.2002 for reanalysis of the sample by the Central Laboratory. That application could not be decided for one reason or the other and it ultimately became infructuous as the shelf-life of the sample was over by the time that application came to be disposed of.

It was, thereafter, that the petitioners filed an application dated 07.01.2004 (Annexure P-8) for the dismissal of the complaint on an averment that the prosecution had become invalid on account of denial of the right of re-analysis of the sample from the Central Laboratory to the petitioner-accused. That application was dismissed by the learned Trial Magistrate vide order dated 23.07.2004 (Annexure P-10). The finding recorded was that there was no fault on the part of the complainant in the context and that the delay was attributable only to the petitioner who could not be allowed to take advantage of his own wrong.

2. I have heard learned counsel for the parties and carefully perused the record.

3. It requires particular cognizance that the first analysis report dated 08.01.2002 was forwarded to the petitioner-accused on 14.01.2002. Vide a reply dated 24.01.2002, the petitioner expressed inclination to get the sample re-analysed from the Central Laboratory. It was only on 04.02.2002 that the Deputy Director Agriculture, Jhajjar, offered his response thereto. By that time, the statutory period of 28 days (during which an accused has

to exercise its option) to get the sample re-analysed was over. The fault, thus, was squarely that of the complainant.

4. Even though the petitioner-accused had expressed inclination vide reply dated 24.02.2002 to get the sample re-analysed, the complaint came to be filed in the Court only on 12.06.2003. By that time, the shelf-life of sample was over. Apart therefrom, as noticed in the impugned order, the complainant had initially endorsed no objection on the application dated 13.11.2002 for re-analysis which had been filed by the complainant. That consent was subsequently withdrawn and the matter had to be adjourned for filing of reply. The complainant has not been able to offer even an explanation about why did it first endorse no objection on the application and opted to withdraw the consent at a subsequent point of time. The resistance offered to the application was without any justification.

5. Even the application remained pending for avoidably long period in the Court of learned Trial Magistrate. Things could be different if the learned Trial Court had not delayed disposal of the application. It is neither here nor there for the learned Trial Magistrate to record that "thereafter, the applicant application could not be decided for one reason or the other. Ultimately, the application became unfructuous. There is no use to proceed with the complaint, the same be dismissed."

6. As would be apparent from a perusal of the above discussion, the petitioner – accused cannot at all be blamed for having caused any delay in the matter of re-analysis of the sample. It had throughout been clamouring for re-analysis of the sample but the Deputy Director Agriculture, Jhajjar did not take any steps to ensure that the complaint was filed in Court in time and the application for re-analysis was

allowed/disposed of the concerned Trial Magistrate in time. The benefit thereof has to obviously accrue to the petitioner-accused whose statutory right to get the sample re-analysis came to be defeated, for no fault of his.

7. The petition shall stand allowed. The impugned order dated 23.07.2004 (Annexure P/10) passed by Sub Divisional Judicial Magistrate, Bahadurgarh and complaint (Annexure P-5) shall stand quashed.

May 07, 2007 (S.D. Anand)
vkd Judge